

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN DISTILLING COMPANY LLC,)	1:10-cv-4903 (NG)(RML)
)	
Plaintiff,)	
)	
v.)	
)	
BREUCKELEN DISTILLING COMPANY INC.)	
and BRAD ESTABROOKE,)	
)	
Defendants.)	
)	

JOINT PROPOSED SCHEDULING ORDER PURSUANT TO FRCP RULE 16(b)

Plaintiff and counter-claim defendant Brooklyn Distilling Company LLC (“Brooklyn” or “Plaintiff”), together with defendants and counterclaimants Breuckelen Distilling Company Inc. and Brad Estabrooke (jointly, “Breuckelen” or “Defendants”), hereby submit this Joint Proposed Scheduling Order pursuant to FRCP Rule 16(b). Pursuant to FRCP Rule 26(f) a conference of counsel was held on Wednesday, January 5, 2011, and the parties jointly request that the Court approve the following Proposed Scheduling Order:

A. Short Synopsis of Main Claims and Defenses

1. Brooklyn’s Claims

Brooklyn claims that Defendants have infringed and continue to infringe upon Brooklyn’s federally-registered trademark “Brooklyn Gin” and design for distilled spirits, liquor, and gin through their use of the “Breuckelen” trademark and the “Breuckelen Distilling Company Inc.” trade name, and related domain names in connection with the marketing and sale of gin and whiskey. Brooklyn claims that it has a valid trademark, is the senior user of its trademark with respect to Defendants, and Defendants’ continued use of the “Breuckelen” and “Breuckelen Distilling” marks, the trade name “Breuckelen Distilling Company Inc.” and

various domain names has caused actual confusion with respect to the source or sponsorship of Brooklyn's or Defendants' goods and commercial activities.

2. Breuckelen's Claims

Breuckelen claims that Plaintiff's trademark is not a valid mark and was improperly registered. Even if Plaintiff's trademark is determined to be valid, Breuckelen's use does not infringe Plaintiff's trademark. Plaintiff is essentially asserting ownership of the word "Brooklyn" in relation to the sale of gin, which is in violation of 15 U.S.C. § 1052, which prohibits a trademark both when it is: (1) "a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods" (15 U.S.C. § 1052(a)); and (2) "when used on or in connection with the goods . . . is primarily geographically descriptive of them" (15 U.S.C. § 1052(e)(2)). Moreover, Plaintiff's trademark uses the word "Brooklyn," a word whose spelling and pronunciation are different from those of "Breuckelen." Therefore, a consumer is not likely to be confused by Breuckelen's use.

B. Key Legal Issues

The key legal issues in this action are: (1) the validity of Brooklyn's trademark; and (2) whether Brooklyn's trademark for gin and spirits has been and continues to be infringed by Defendants' use of "Breuckelen" for gin.

C. Realistic Range of Provable Damages

The parties presently cannot determine the range of possible damages because no discovery has yet been conducted.

D. Insurance Coverage

The parties are not aware of any insurance coverage for any of the claims in this lawsuit.

E. DISCOVERY AND EXPERTS

1. Initial Disclosures

The parties agree to exchange Rule 26 disclosures on or before January 19, 2011.

2. Subjects of Discovery

The parties intend to conduct written discovery and depositions related to Plaintiff's claims and Defendant's denials, affirmative defenses and counter-claims. The parties propose a non-expert fact discovery cut-off of July 15, 2011, and an expert witness discovery cut-off date of September 2, 2011.

3. Discovery Conducted to Date

The parties will exchange Rule 26 information on January 19, 2011. Plaintiff will initiate its written discovery shortly. Defendants served written discovery demands on January 11, 2011.

4. E-discovery

The parties have agreed to produce print-outs of electronic data wherever practicable, and will meet and confer on e-discovery issues if any arise.

5. Protective Order

The parties are meeting and conferring regarding the language of a Protective Order and will submit a proposed Protective Order to the Court.

6. Number of Anticipated Depositions

Brooklyn currently intends to depose defendants Breuckelen and Estabrooke, any declarants used in opposition to Plaintiff's motion for preliminary injunctive relief, and third parties whose testimony may be relevant to the issues in the action, including actual confusion witnesses and others as determined during the course of discovery. Defendants intend to depose Angel Joseph Santos, who submitted a declaration in support of Plaintiff's motion for a

preliminary injunction, Plaintiff Brooklyn, witnesses mentioned in Plaintiff's motion for a preliminary injunction, and third parties whose testimony may be relevant to the issues in the action.

7. Expert Witness Disclosures

The parties propose that case-in-chief expert witness reports be exchanged on July 15, 2011, with rebuttal expert witness reports to be served within three (3) weeks of that date.

F. Settlement Discussions

The parties are scheduled to appear before Magistrate Judge Levy on January 24, 2011, at 11:30 am for an initial settlement conference.

G. Trial Estimate

Brooklyn estimates that the entire trial will take approximately no more than seven court days, including jury selection. Breuckelen believes that the entire trial would take one to three days. It is not yet possible to specify how many witnesses will be called.

H. Other Issues Affecting Case Management

The major issue affecting disclosure in the action is whether Brooklyn's motion for preliminary injunctive relief is granted.

I. Magistrate Judge

The parties do not consent to trial by a Magistrate Judge.

DATED: January 14, 2011

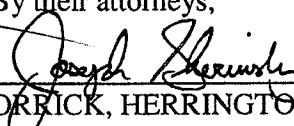
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